

HB 408 – Presumptive Diseases for Fire Fighters

Summary of Testimony

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While the direct impacts of this bill cannot be quantified, given the limitation to paid fire fighters, the direct immediate impact to the workers' compensation system as a whole is, as the fiscal note indicates likely to be insignificant, it will result in significant increases to the cost of fire protection. With regard to this increase there is an order of magnitude question still open in the fiscal note with no better guess than that the cost of workers' compensation will increase by 15% to 70%. Further the fiscal note includes no estimate of the impact of the cost of testing required by Section 2 (1) at page 7, lines 7 to 14.

It is submitted that this not the time to commit to costs whose magnitude cannot even be accurately estimated.

Currently all workers are covered for occupational diseases. The requirement however is that the employee who claims an occupational disease is required to show that his or her disease is in fact related to their employment. This bill will reverse that standard but only for the small and limited group of persons employed as fire fighters. For firefighters it will, if this bill becomes law, presume that heart disease, lung disease, and the long list of cancers set out in Section 1 of the bill at page 4, line 30 to page 5, line 7 are caused by employment and occupational disease benefits made available without proof of causation.

It is important to note that diseases covered, terrible though they are not by any stretch of the imagination limited to fire fighters. A male free of CVD at age 50 has a life time risk of 51.7% of developing CVD and woman free of CVD at age 50 has a life time risk of 39.2% of developing CVD (Medscape Today) Similarly the risk of cancer is wide spread with the American Cancer Society reporting the following risks: For males free of cancer at age 40 there is a 1 in 12 risk of cancer before age 59 and for females free of cancer at age 40 there is 1 in 11 risk of cancer before age 59. If these diseases are presumed to be a result of employment for firefighters, then, since a negative (the disease was not a result of employment) is impossible to prove the workers' compensation system will be providing special benefits to this select group which are not generally available to other workers at a cost which cannot even be accurately estimated.

If it were possible to be certain that the benefits could be limited to this special group, the potential cost, uncertain but large though certainly will be, might be a risk worth taking. However it is not certain that the benefits offered to firefighters under this bill can be limited to firefighters.

In Stavenjord v. MT State Fund, 2003 MT 67 the Montana Supreme Court, in a decision on the different benefits provided to workers claiming an occupational disease as opposed to workers claiming an injury, held that equal protection required equal compensation for workers with equal impairments.

The essence of equal protection is that similarly situated persons should be treated equally by the law. Under current law all workers claiming an occupational disease are treated equally. If the worker can show that their disease is caused by their employment they are entitled to compensation. If this bill passes all workers will not be treated equally since many illness will be presumed to be work related for firefighters, while all other workers will still be required to prove that their illness is work related.

This unique status for fire fighters can be sustained against an equal protection challenge made a non-fire fighter only if the statistically increased chance of occupational disease is unique to fire fighters. Quite simply and sadly it is not. Many occupational groups experience statistically increased chances of certain cancers and other diseases which this bill presumes are unique in their increased statistical frequency to fire fighters. The following is but a small sample drawn from the Web of such occupational increased statistical chances

Epidemiological studies show increased lung and bladder cancer in aluminum workers.¹

Studies show strong associations of cancers of the nasal cavities and paranasal sinuses in workers exposed to wood dust²

Farmers have a higher incidence of several cancers including leukemia, non-Hodgkin's lymphoma, and brain cancer, prostate and skin cancer³

¹ National Institute of Occupational Safety & Health

² National Institute of Occupational Safety & Health

³ Cancer Research, 50(20) 6585-6591, 1990 & Occupational Medicine, State of the Art Reviews, Hanley & Belfus, Inc: Philadelphia, PA 1997

Hairdressers experience increased risks for cancer⁴

Diesel truck drivers are approximately 50% more likely to get lung cancer than other workers⁵

Without further belaboring the point many other examples exist of occupations where studies show that the occupation has an increased statistical risk of cancer including farm workers, dry-cleaning workers, painters, and industrial spray painters.

What these examples demonstrate is that the statistically increased risk of occupational disease is not unique to firefighting as a profession. This calls into question the basis for treating firefighters differently than other workers. If an equal protection challenge is made and succeeds to the creation of special class for fighters the result will be extension of the presumptive disease standard to any and all occupations where there exist statistical indications of increased risk of occupational disease. This cost will not be insignificant, it will be catastrophic.

This Committee should recommend do not pass on HB 408 on the grounds that the costs are unknown but substantial and on the grounds that it creates without a rational basis a special class for purposes of determining entitlement to occupational disease benefits with the possibility that these benefits will be extended to all employees on the grounds that to deny them to all employees would violate equal protection.

⁴ International Journal of Cancer,, 105(1):108-112, 2003

⁵ Occupational Environmental Medicine, 60(7): 516-520, 2003 & American Journal of Industrial Medicine, 36(4): 405-414, 1999